



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 14-061

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

Currently, s. Trans 102.15 (3) (b) authorizes the department to exercise its discretion to issue an operator’s license or identification card to persons who are unable to provide proof of name and date of birth. The proposed rule would also allow the department to apply this provision and a similar newly created provision to circumstances in which an applicant is unable to provide documentation of the person’s citizenship or legal presence. [SECTIONS 8 and 11 of the proposed rule.] Does the department believe the changes relating to proof of citizenship are required by *Milwaukee Branch of NAACP v. Walker*, 2014 WI 98? Because “valid documentary proof” of citizenship or legal presence is required by statute for operator’s licenses and identification cards (see s. 343.14 (2) (es) and s. 343.50 (4), Stats.), the department should clarify the authority on which it relies on to provide that it may exercise its discretion to determine whether a person who is unable to provide standard documentation of his or her citizenship or legal presence may obtain an operator’s license or identification card.

2. Form, Style and Placement in Administrative Code

a. The heading “Explanation of Statutory Authority” should be “Explanation of Agency Authority.” [s. 1.02 (2), Manual.]

b. SECTION 6 of the proposed rule amends the note to s. Trans 102.15 (3) (a) 2. Arguably, both the existing note and the proposed revision to the note are substantive requirements. The department may wish to consider whether the note or the amendment to the note are necessary, and if it concludes they are, whether this material might more appropriately be included within the

text of the rule. [s. 1.09 (1), Manual (notes may not include substantive requirements and are not part of the substantive law created by rule).]

c. In SECTION 8 of the proposed rule, it appears certain deleted material, “(a)”, is omitted from the rule rather than indicated with stricken text. Additionally, is it necessary for the department to amend s. Trans 102.15 (5m) (a) 2., as renumbered, to refer to “sub. (3) (a)” rather than “par. (a)”?

d. SECTION 11 of the proposed rule would be easier to understand if the department were to break up the substantive requirements in this SECTION into smaller subdivisions. For example, the clarity of this section would increase if requirements that the rule imposes on applicants for identification cards are not placed within the same subdivision as obligations the rule imposes on the department.

e. SECTION 11 of the proposed rule refers to circumstances when “the person’s birth certificate is unavailable”. Although a birth certificate is likely the most common document to prove name, date of birth, or citizenship, it is one of several documents that may be used to satisfy these requirements. Would it be more accurate to refer to the unavailability of documentation under s. Trans 102.15 (3) (a) or (3m) instead?

f. SECTION 11 of the text of the proposed rule proposes to create both s. Trans 102.15 (5m) (b) and a note to this paragraph; however, the treatment clause does not reflect the creation of the note. [s. 1.09 (2), Manual.] (See below, as well, for a question about whether this note is necessary.)

g. The department should ensure each SECTION of the rule is arranged according to the decimal-numbered rule provision being treated, “as it appears in the Administrative Code at the time of drafting or, in the case of a newly created provision, in the order in which it will appear in the Code.” [s. 1.04 (1), Manual.] Section Trans 102.15 (3) (d) in SECTION 12 of the proposed rule is treated out of sequence.

h. In the rule text and rule analysis, the word “section”, when referring to the sequentially numbered sections of the rule, should be in small caps (SECTION). [s. 1.04, Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The department should ensure that all citations within the rule are formatted correctly and that the same citation format is used throughout. Among other requirements, there should be a space between each subdivision in a citation [e.g., write “s. Trans 102.15 (5m) (b) 2.” rather than “s. Trans 102.15(5m)(b)2.”].

b. Throughout, the department should ensure all internal references to rule provisions are formatted as provided in s. 1.07 of the Manual. For example, in SECTION 4 of the proposed rule, the department has proposed inserting text that would refer, within s. 102.15 (1) (b), to “Trans 102.15 (3) (a)”. The correct internal citation here is: “sub. (3) (a)”. [s. 1.07 (2), Manual.]

c. Throughout, the text of the proposed rule would benefit from editing to improve concision and directness. For example, the beginning of the first sentence of SECTION 4, “For purposes of a person applying for an identification card who requests that the identification card

be provided for voting purposes...” could more directly be written as follows: “With respect to an application for an identification card requested without charge for voting purpose...”.

d. The text created by SECTION 1 of the proposed rule is not grammatically correct when read in conjunction with the rule’s current introductory clause (“Operator’s licenses and identification cards:”). Each subsection of s. Trans 102.04 is to be read as though preceded by this clause.

e. It would be beneficial if the department would clarify what is meant by the clause “in addition to the meaning given in par. (a)” in SECTION 4 of the proposed rule. It appears that the intended meaning may be that either definition of “unavailable” can be applied to identification cards requested without charge for voting purposes. But it could also be interpreted to mean that the definitions are additive. This confusion is amplified by the fact that the existing definition purports to define “unavailable” by describing what it is not, while the new language pertaining to identification cards for voting purposes defines “unavailable” by saying what it is. Regardless, the department might consider amending the rule to provide additional clarity about what this term means.

f. The word “note” in the treatment clause of SECTION 6 of the proposed rule should be in parentheses. [s. 1.09 (2), Manual.]

g. SECTION 8 of the proposed rule text addresses circumstances when “a person is unable to provide documentation under sub. (3) (a) and (3m)...”. The department’s use of the conjunctive “and” suggests this would only apply if a person was unable to provide both documentation of name and date of birth and documentation of citizenship. There may be instances in which the applicant can provide proof of one but not the other. If the department intends this provision to apply to those instances as well, it might consider replacing “and” with “or”. Similarly, the department should review the reference to “sub. (3) or (3m)” in s. Trans 102.15 (5m) (b) 2.

h. The second sentence of SECTION 11 of the proposed rule is grammatically incorrect. This sentence has been structured as a list following a colon in which every item in the list is separated by a semicolon. With this type of structure, each item in the list must be able to be read separately as if it were immediately preceded by the semicolon. The second and third items in the list cannot be read this way.

i. In SECTION 11 of the proposed rule, it is not clear which department is responsible for verifying the applicant’s birth record information if the person was born in another jurisdiction. If the person was not born in Wisconsin, is it the Department of Transportation or the Department of Health Services that verifies the person’s birth record information with other jurisdictions?

j. Section Trans 102.15 (5m) (b) 2. f. should end with a period.

k. The department proposes to create a note in SECTION 11 of the text of the proposed rule that refers to the penalty in s. 946.32, Stats., for false swearing. It is not clear what the purpose of this note is. Notes may be used if “it is necessary to clarify a rule by using examples, illustrations, or other explanatory material or if an agency wishes to disclose where or how particular information, including forms, may be obtained.... Notes may not include substantive requirements and are not part of the substantive law created by rule”. [s. 1.09 (1), Manual.]

1. SECTION 12 of the proposed rule raises at least three questions. The proposed text authorizes the administrator to “approve a name change requested by a person who cannot provide documentation of the name change if the administrator receives proof of the name change from the federal social security administration and proof of identity in the new name”. First, the proposed text is not clear about the purpose for which the administrator may approve a name change. Second, the text, by using the passive voice, is unclear about who is responsible for obtaining proof of the name change from the social security administration and proof of identity in the new name. Third, is it appropriate to use “may” to connote permissive authority rather than “shall” to connote mandatory duty?